Subject Index

Page

Supplemental statement of case 2

Argument 4

1. The default judgment, insofar as it requires the county officials to make provision for payment of the money judgment against the district, is void 4

   (a) It is void for the reason that it provides relief in excess of that prayed for in the complaint 4

   (b) It is void for the further reason that the court did not have jurisdiction over the county officials when the judgment was rendered 5

2. Dismissal of the contempt proceeding was proper 5

3. The decision of the court below does not conflict with its earlier decision in Board of Supervisors of Riverside County v. Thompson, 122 Fed. 860 6

4. Petitioner is not entitled to relief by mandamus as a matter of right 7

5. The petition raises no special or important question of law; nor would the decision of the court below, if permitted to stand, deprive petitioner of any relief to which it is entitled 10

Table of Authorities Cited

Cases	Pages
Beauchamp v. United States, 76 Fed. (2d) 663	5
Board of Supervisors of Riverside County v. Thompson, 122 Fed. 860	6
Duncan Townsite Company v. Lane, 245 U.S. 308, 62 L. ed. 309, 38 S. Ct. 99	9
El Camino Land Corporation v. Board of Supervisors of Tehama County, 43 Cal. App. (2d) 351, 100 Pac. (2d) 1076	9
Ex parte Fisk, 113 U.S. 713, 28 L. ed. 1117, 5 S. Ct. 724	6
Metropolitan Life Insurance Company v. Welch, 202 Cal. 312, 260 Pac. 545	4
Pennoyer v. Neff, 95 U.S. 714, 24 L. ed. 565	5
Selby v. Oakdale Irrigation District, 140 Cal. App. 171, 35 Pac. (2d) 125	9
Thompson v. Perris Irrigation District, 116 Fed. 769	7
Walden v. Craig's Heirs et al., 14 Peters 147, 10 L. ed. 393	5

Statutes	
Code of Civil Procedure, Section 580	4
Water Code:	
Sections 26500 to 26504	2
Section 25650	3
28 U.S.C.A., following Section 723c	4, 8

Rules	
Federal Rules of Civil Procedure:	
Rule 54(c)	4
Rule 81(b)	8

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. 444

PUEBLO TRADING CO. (a corporation),
Petitioner,

vs.

EL CAMINO IRRIGATION DISTRICT (a public corporation); B. A. OSBORN, S. E. AYER, J. P. BURTON, WALTER MAYES and WALTER BUNTING, Members of the Board of Supervisors of Tehama County, and W. E. ROCHFORD, Assessor of Tehama County, California,
Respondents.

RESPONDENTS' REPLY TO PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

In opposition to the petition for writ of certiorari filed herein, Respondents respectfully show:

SUPPLEMENTAL STATEMENT OF CASE.

The following matters, not shown in Petitioner's statement of the case, are essential to an intelligent understanding of the controversy:

(a) In its complaint against El Camino Irrigation District, Petitioner prayed only for a money judgment and for general relief. (R. 5.) The district did not appear in the action and the judgment was taken by default. (R. 6.) This judgment was not limited to the relief prayed for in the complaint; it went beyond the prayer and ordered the members of the County Board of Supervisors and the County Assessor, Respondents herein, to make provision for payment of the money judgment by levying and collecting assessments against lands in the irrigation district in the manner provided by Division 11 of the State Water Code,[1] upon the failure or refusal of the district and its officers to make such provision. (R. 7.)

(b) The county officials were strangers to the action when the default judgment was entered, and they

[1]Sections 26500 to 26504, inclusive, of the Water Code provide for the levying of assessments by the county in cases where the irrigation district fails to make the required levy. They are set out in the appendix to this brief.

were also strangers to the action when they were served with copies of the default judgment and with copies of Petitioner's notice and demand. (R. 24, 25.) None of these county officials had been made a party to the action or had made a voluntary appearance therein, and it was not until they were served with the order to show cause, citing them for contempt for failure to carry out the judgment, that they were brought before the District Court by any process whatsoever. (R. 12, 13, 26.)

(c) Petitioner states that the Court below sustained the order of the District Court dismissing the contempt proceeding, but gave no consideration to the failure of the District Court to provide relief by ancillary mandamus. (Pet. p. 8.) The record shows that Petitioner made assignments of error and stated the points on which it intended to rely on appeal to the Court below. (R. 30, 31, 34.) The failure of the District Court to grant such relief was neither assigned by Petitioner as error, nor stated by Petitioner as a point to be relied on on appeal.

(d) Petitioner quotes but a portion of Section 25650[2] of the State Water Code. (Pet. p. 6.) The omitted part requires a levy sufficient to retire *all* of the outstanding and matured bonds of the district, and not merely those held by Petitioner. The economic consequences of such a levy are far more serious than if but a part of the bonds are to be retired.

---

[2]This section of the Water Code is set out in full in the appendix hereto.

ARGUMENT.

1. **THE DEFAULT JUDGMENT, IN SO FAR AS IT REQUIRES THE COUNTY OFFICIALS TO MAKE PROVISION FOR PAYMENT OF THE MONEY JUDGMENT AGAINST THE DISTRICT, IS VOID.**

(a) It is void for the reason that it provides relief in excess of that prayed for in the complaint.

The only basis for Federal jurisdiction in this case is the diversity of citizenship between the parties. However, both under the State law and under the Federal Rules of Civil Procedure the relief granted, in cases where a default judgment is taken, cannot exceed the relief specifically prayed for in the complaint. Code of Civil Procedure of the State of California, Section 580;[3] Rule 54(c) of the Federal Rules of Civil Procedure.[4] In its complaint, Petitioner prayed only for a money judgment and for general relief. R. 5.) The judgment was taken by default and, insofar as it requires the county officials to make provision for payment of the money judgment, it goes beyond the prayer in the complaint and is void for that reason. The prayer for general relief does not enable the Court to grant relief beyond that specifically prayed for. *Metropolitan Life Insurance Company v. Welch,* 202 Cal. 312, 314, 315, 260 Pac. 545.

---

[3]This section provides: "The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue."

[4]Rule 54(c) provides: "A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." 28 U.S.C.A. following Section 723c.

(b) It is void for the further reason that the Court did not have jurisdiction over the county officials when the judgment was rendered.

The judgment is *in personam* and it is elementary that a person cannot be bound by such a judgment unless the Court has jurisdiction over him when the judgment is rendered. Jurisdiction can be acquired only by the lawful service of process upon such person, or by his voluntary appearance. *Pennoyer v. Neff*, 95 U.S. 714, 724, 24 L. ed. 565, 569. None of the county officials was made a party to the action, or made a voluntary appearance therein, or, prior to being served with the order to show cause which cited them for contempt for failure to carry out the judgment, was brought before the Court by any process whatsoever. Copies of the default judgment and of Petitioner's notice and demand were served upon them, but this was not such service of process or notice as will satisfy the jurisdictional requirement. It follows that that part of the default judgment which purports to bind the county officials, is void for the reason that the Court did not have jurisdiction over them when the judgment was rendered. *The Lessee of Walden v. Craig's Heirs et al.*, 14 Peters 147, 154, 10 L. ed. 393, 397.

---

2. DISMISSAL OF THE CONTEMPT PROCEEDING WAS PROPER.

Disobedience of a void judgment is not contempt. *Beauchamp v. United States*, 76 Fed. (2d) 663, 668. If the Court had made an order punishing the county officials for contempt for failure to carry out the judg-

ment, that order would have been equally void. *Ex parte Fisk,* 113 U.S. 713, 718, 28 L. ed. 1117, 1119, 5 S. Ct. 724.

---

3. THE DECISION OF THE COURT BELOW DOES NOT CONFLICT WITH ITS EARLIER DECISION IN BOARD OF SUPERVISORS OF RIVERSIDE COUNTY v. THOMPSON, 122 FED. 860.

The District Court in its order dismissing the contempt proceeding, distinguished the case of *Board of Supervisors of Riverside County v. Thompson,* 122 Fed. 860, from our case. (R. 28.) The two cases clearly are distinguishable on the facts, although Petitioner labors to show that they are not. (Pet. pp. 22-24.)

In the *Thompson* case, a bondholder had recovered a money judgment against an irrigation district in an earlier action. The judgment was not taken by default, inasmuch as the case went to trial. It does not appear that the board of supervisors was even mentioned in the judgment. Thereafter, the judgment creditor petitioned the Court for a writ of mandate requiring the board of supervisors to make provision for payment of the judgment by levying an assessment against the lands in the irrigation district. An alternative writ was issued and in response thereto the board of supervisors and the district moved to quash the writ and also interposed demurrers to the petition. The motions to quash and the demurrers were overruled by the Court which thereupon ordered a peremptory writ of mandamus to be issued. Certain taxpayers of the district were then permitted to intervene. The order for the issuance of the peremptory writ was set aside and

answers were filed to the petition of the judgment creditor. In the subsequent proceeding the Court rendered judgment directing the issuance of the peremptory writ, which judgment was affirmed on appeal.

It will be noted that in the *Thompson* case, the members of the board of supervisors were in Court and were afforded an opportunity to be heard, *before* the Court rendered its judgment directing the issuance of the peremptory writ which required them to make the levy. The alternative writ was the process by which the supervisors were brought before the Court; as stated in the related case of *Thompson v. Perris Irrigation District,* 116 Fed. 769, 770, *it was process essential to jurisdiction.*

In our case the mandate, ordering the county officials to make the levy, was contained in a default judgment and was void because it exceeded the relief specifically prayed for in the complaint. At the time this mandate was issued the county officials had not been brought before the Court, nor had they been afforded an opportunity to be heard. *The lawful process, which is essential to jurisdiction, is lacking in our case.*

---

4. PETITIONER IS NOT ENTITLED TO RELIEF BY MANDAMUS AS A MATTER OF RIGHT.

Petitioner contends that if the District Court was correct in dismissing the contempt proceeding, the Court should have construed the order to show cause as a proceeding under Rule 81(b) of the Federal Rules

of Civil Procedure[5] and should have required that the levy be made. (Pet. p. 28.) The record is devoid of any offer of proof by Petitioner that it is entitled to such mandatory relief as a matter of right. Nor is there any showing in the record that Petitioner requested such relief at the hearing. Petitioner had already obtained a mandate ordering the county officials to make the levy in the event that the judgment debtor failed to do so. This mandate was contained in the default judgment. (R. 7.) Petitioner's notice and demand addressed to the board of supervisors (R. 24), and its petition for the order to show cause (R. 14-16), show that it was Petitioner's purpose to enforce, through a contempt proceeding, mandatory relief already granted. It would seem reasonable to suppose that if Petitioner had pressed for any additional mandatory relief at the hearing, the Court's failure to provide such relief would have been assigned by Petitioner as error on appeal to the Court below. The record shows that no such assignment of error was made (R. 30, 31, 34); instead, Petitioner assigned as error, and adopted as its first point on appeal, the making and entering of the order dismissing the contempt proceeding. (R. 30, 34.)

Relief by mandamus is not granted as a matter of right, but only as a matter of sound judicial discretion. *Duncan Townsite Company v. Lane,* 245 U.S. 308, 311,

---

[5]Rule 81(b) provides: "The writs of scire facias and mandamus are abolished. Relief heretofore available by mandamus or scire facias may be obtained by appropriate action or by appropriate motion under the practice prescribed in these rules." 28 U.S.C.A., following Section 723c.

312, 62 L. ed. 309, 311, 38 S. Ct. 99. This presupposes a careful consideration of all of the material facts by the Court. In order to retire the bonds held by Petitioner, it will be necessary to levy assessments in an amount sufficient to retire *all* of the matured and outstanding bonds of the district. State law forbids discrimination between bondholders in this matter. *Selby v. Oakdale Irrigation District,* 140 Cal. App. 171, 177, 178, 35 Pac. (2d) 125. This applies equally to assessments levied by the district through its board and to assessments levied by the County Board of Supervisors. Water Code of the State of California, Sections 25650, 26500.[6]

The matter of requiring such a levy was considered by the State Courts in 1941, in a case involving the same irrigation district, the same bond issue and the same board of supervisors. The State lower Court found facts showing that it was the legal duty of the board of supervisors to levy the assessments, but it also found additional facts of an equitable nature which precluded the issuance of a writ of mandamus to compel the levy. The decision of the State lower Court was sustained on appeal. *El Camino Land Corporation v. Board of Supervisors of Tehama County,* 43 Cal. App. (2d) 351, 100 Pac. (2d) 1076. Surely the District Court will want to inquire into the present fiscal condition and affairs of the irrigation district, before making any determination with respect to the granting of relief by ancillary mandamus proceeding.

---

[6]These sections are set out in the appendix hereto.

5. THE PETITION RAISES NO SPECIAL OR IMPORTANT QUESTION OF LAW; NOR WOULD THE DECISION OF THE COURT BELOW, IF PERMITTED TO STAND, DEPRIVE PETITIONER OF ANY RELIEF TO WHICH IT IS ENTITLED.

The petition herein is based purely on technique and does not raise any special or important question of law or have any value as a precedent. Petitioner has not been deprived of any right to which it is entitled. The relief predicated on an asserted contempt was properly denied. Petitioner now complains of the District Court's failure to provide relief by ancillary mandamus in the contempt proceeding, although the point was not stated by Petitioner on the appeal to the Court below. (R. 30, 31, 34.) Petitioner is not entitled to such relief as a matter of right, but its right to apply for such relief has not been foreclosed either by the decision of the District Court (R. 27-29) or by the decision of the Court below (R. 40, n.2.) No substantial rights or equities of Petitioner are involved, inasmuch as Petitioner can apply at any time to the District Court for relief by ancillary mandamus proceeding. Petitioner could have applied for such relief at the contempt proceeding, held more than a year ago, or at any time since. In sum, the petition deals only with questions of sheer technical procedure entirely unrelated to fundamental rights and equities.

It is respectfully submitted that the petition for writ of certiorari should be denied.

Dated, Sacramento, California,
December 29, 1948.

STEPHEN W. DOWNEY,
Attorney for Respondents.

EDMUND M. MOOR,
District Attorney of the County of Tehama,
L. C. SMITH,
DOWNEY, BRAND, SEYMOUR & ROHWER,
Of Counsel

(Appendix Follows.)

Appendix

Water Code:

25650. Each district by its board each year within 15 days after the close of its session as a board of equalization shall levy an annual assessment upon the land within the district in an amount sufficient to raise all of the following:

(a) Interest due or that will become due on all outstanding bonds of the district and interest which the board believes will become due on district bonds authorized but not sold, all respectively before the close of the next ensuing calendar year.

(b) Principal of all bonds of the district that have matured or that will mature before the close of the next ensuing calendar year.

To the extent that provision is otherwise made as permitted by law for the payment of bond principal and interest, levies for principal and interest pursuant to this section need not be made.

26500. If a board neglects or refuses in any year to levy assessments pursuant to this part, the board of supervisors of the office county shall, as provided in this article, perform the duties of the board of the district in respect to levying assessments in the same manner and with the same effect as if they were performed by the board.

26501. The applicable part of the equalized county assessment rolls of the affected counties shall be the

basis of assessment for the district when its assessments are levied pursuant to this article.

26502. If any land subject to assessment for the purposes of the district does not appear upon a county assessment roll used as the basis of assessment for the district, the land omitted shall be forthwith assessed by the county assessor of the county in which it is situated upon an order of the board of supervisors making the assessment, and a description of the property omitted shall be written in the roll prepared for the district assessments.

26503. The board of supervisors shall meet and equalize each assessment made pursuant to this article with the assessment of other land in the district. The same notice shall be given by the board of supervisors of a meeting for the purpose of equalizing the assessment to be made as herein directed as is provided to be given by a district secretary when a board is to meet to equalize assessments.

26504. All expenses incurred in levying the assessment shall be borne by the district concerned. Unless the expenses are paid within 60 days from the time when a demand for them is made, they shall be collected by an action commenced by the district attorney of the county whose board of supervisors prepared the assessment roll.